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## Hewlett-Packard's Spy Games and the "Duty of Caremark": How Inconsistent Standards Governing a Director's Duty of Care Disgraced a Company

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## CASE COMMENT

### CONSTITUTIONAL LAW: THE REASONABLENESS REQUIREMENT AND FOURTH AMENDMENT BOUNDARIES TO CO-OCCUPANT CONSENT

*Georgia v. Randolph*, 547 U.S. 103 (2006)\*

*Tim Buskirk\*\**

Respondent, Scott Randolph, and his wife, Janet Randolph, were both present when police officers requested consent to perform a warrantless search of Respondent's residence.<sup>1</sup> Respondent was absolute in his refusal to consent;<sup>2</sup> however, Respondent's wife consented to the search.<sup>3</sup> Upon searching the residence, the officers discovered evidence of drug use,<sup>4</sup> and Respondent was indicted for cocaine possession.<sup>5</sup> The trial court found the search reasonable because Respondent's wife was a co-occupant of the premises and consented to the search.<sup>6</sup> The Court of Appeals of Georgia reversed the trial court's decision and the Georgia Supreme Court affirmed.<sup>7</sup> The Georgia Supreme Court reasoned that the search was invalid because a present and objecting co-occupant does not forfeit the

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\*\* I would like to thank my family for their unwavering encouragement and support.

1. *Georgia v. Randolph*, 547 U.S. 103, 107 (2006). The officers initially arrived at Respondent's residence in response to a domestic dispute call made by Respondent's wife. *Id.* Respondent's wife mentioned to the officers that Respondent had taken their son from the residence and that Respondent was a habitual cocaine user. *Id.* This statement prompted the officers' suspicion that drugs may be in the residence. *See id.* Respondent arrived at his residence shortly after the officers arrived. *Id.*

2. *Id.* When one of the officers asked Respondent for his consent to allow the officers to search his residence, Respondent clearly and "unequivocally refused" to give his consent. *Id.*

3. *Id.*

4. *Id.* The officers initially discovered a "powdery residue" in one of the bedrooms. *Id.* They later returned with a search warrant and discovered and seized other "evidence of drug use." *Id.*

5. *Id.*

6. *Randolph*, 547 U.S. at 107-08. Respondent "moved to suppress the evidence, as products of a warrantless search of his house unauthorized by his wife's consent over his express refusal. The trial court denied the motion, ruling that Janet Randolph had common authority to consent to the search." *Id.*

7. *Id.* at 108.

right to control who has access to the residence simply because another co-occupant consents to entry.<sup>8</sup> The U.S. Supreme Court granted certiorari, affirmed, and HELD, that a warrantless search for evidence is unreasonable when a present co-occupant expressly refuses to consent to the search despite the consent of another present co-occupant.<sup>9</sup>

The Fourth Amendment prohibits unreasonable searches and seizures and specifically mentions houses as one area where this protection absolutely exists.<sup>10</sup> Although the search in the instant case took place in a house,<sup>11</sup> the Supreme Court initially addressed the reasonableness of third-party consent to warrantless searches in a different factual setting.<sup>12</sup>

In *Frazier v. Cupp*, the Court addressed the reasonableness of a warrantless search, with regard to an absent individual, when a consenting third-party is the only party present at the time law enforcement officers request to search an item and the third-party and the absent individual share access or use of that item.<sup>13</sup> In *Frazier*, Petitioner and his cousin, Rawls, shared a duffel bag that was kept in Rawls's residence.<sup>14</sup> Upon Rawls's arrest, police obtained Rawls's consent to search the duffel bag for his clothing, but Petitioner did not consent because he was not in the house at the time.<sup>15</sup> During the search, police found and took Petitioner's clothing, which was later admitted into evidence for the prosecution of Petitioner for murder.<sup>16</sup> The Court affirmed the murder conviction holding that the search of the duffel bag was not unreasonable as to Petitioner, and therefore, did not violate his Fourth Amendment rights.<sup>17</sup>

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8. *Id.* The Georgia Supreme Court "held that an individual who chooses to live with another assumes a risk no greater than 'an inability to control access to the premises during [his] absence.'" *Id.* (quoting *State v. Randolph*, 604 S.E.2d 835, 837 (Ga. 2004)).

9. *Id.* at 108, 120.

10. The Fourth Amendment to the U.S. Constitution states in pertinent part: "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ." U.S. CONST. amend. IV. *See also* *Payton v. New York*, 445 U.S. 573, 585-86 (1980) (explaining that "[a]s the Court reiterated just a few years ago, the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" (quoting *United States v. U.S. Dist. Court*, 407 U.S. 297, 313 (1972))).

11. *Randolph*, 547 U.S. at 107.

12. *See Frazier v. Cupp*, 394 U.S. 731 (1969).

13. *Id.* at 740.

14. *Id.*

15. *Id.* Both Rawls and his mother consented to the search of the duffel bag. *Id.*

16. *Id.* at 732, 740. Petitioner was convicted of second-degree murder by an Oregon state court. *Id.* at 732. The Oregon Supreme Court affirmed the conviction. *Id.* Petitioner's writ of habeas corpus was granted by the U.S. District Court for the District of Oregon; however, the Ninth Circuit reversed. *Id.* The U.S. Supreme Court subsequently granted certiorari. *Frazier*, 394 U.S. at 732.

17. *Frazier*, 394 U.S. at 740.

The Court first recognized that a mutual agreement to share the duffel bag meant that either user was authorized to give police officers consent to its search.<sup>18</sup> After establishing this premise, the Court reasoned that Petitioner had assumed the risk that his cousin might grant another individual access to the bag.<sup>19</sup> Therefore, the fact that Petitioner did not consent to law enforcement officers searching the duffel bag was irrelevant<sup>20</sup> so long as another mutual user of the same bag did grant consent.<sup>21</sup>

Building upon its establishment of third-party consent in *Frazier*, the Court in *United States v. Matlock* addressed whether a live-in girlfriend could consent to the search of a shared residence when her boyfriend, Respondent, was not present to consent.<sup>22</sup> In *Matlock*, Respondent was arrested for bank robbery<sup>23</sup> in the front yard of the house in which Respondent resided with his girlfriend, Gayle Graff, and her family.<sup>24</sup> The officers did not ask Respondent for consent to search the residence, but instead obtained consent from Graff.<sup>25</sup> The officers found stolen cash in Respondent's bedroom, which was later used as evidence to indict him for bank robbery.<sup>26</sup> Respondent moved to suppress the evidence found in his bedroom<sup>27</sup> on the grounds that the search was unreasonable.<sup>28</sup> The district court upheld Respondent's motion, taking the position that the Government failed to establish that Graff had "actual authority to consent

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18. *Id.*

19. *Id.*

20. *See id.* The Court noted: "Petitioner, in allowing Rawls to use the bag and in leaving it in his house, must be taken to have assumed the risk that Rawls would allow someone else to look inside." *Id.*

21. *Id.*

22. *United States v. Matlock*, 415 U.S. 164, 166 (1974).

23. *Id.*

24. *Id.*

25. *Id.* Respondent had already been arrested at the time officers asked to search the residence. *Id.* Respondent was, therefore, not present at the time Graff consented to the search of the residence. *See id.* Even though the officers knew Respondent was a resident of the house at the time of his arrest, they did not ask for his consent to search the residence. *Id.* Graff's consent to search the house included consent to search the bedroom shared by Graff and Respondent. *Matlock*, 415 U.S. at 166.

26. *Id.* at 166-67.

27. *Matlock*, 415 U.S. at 166.

28. *See id.* at 166-67.

to the search.<sup>29</sup> The court of appeals affirmed, but the U.S. Supreme Court reversed.<sup>30</sup>

The U.S. Supreme Court could not find any reason why Graff's representations to law enforcement officers regarding her connection to the residence should not be considered reliable.<sup>31</sup> In directly addressing the general rule of third-party consent, the Court expanded the *Frazier* rule to residences.<sup>32</sup> Relying heavily on *Frazier*,<sup>33</sup> the Court ruled that the common authority element in a shared residence is the most significant reason for allowing any resident to consent to the entry of an outsider.<sup>34</sup> Therefore, any resident of a shared premises may consent to its search regardless of the fact that the other absent residents cannot or do not consent.<sup>35</sup>

Further expanding on the extent to which third-party consent justifies a warrantless search under the Fourth Amendment, the Court in *Illinois v. Rodriguez*<sup>36</sup> ruled that a law enforcement officer's reasonable belief that, based on an objective standard, a person consenting to a warrantless search has actual authority to do so is all that is necessary to validate the search.<sup>37</sup>

In *Rodriguez*, Respondent's girlfriend, Gail Fischer, called law enforcement officers after Respondent beat her.<sup>38</sup> Fischer was staying at her

29. *Id.* at 168. The district court excluded a significant portion of Graff's oral statements to the officers, classifying them as hearsay. *See id.* The district court reasoned that the remaining, admissible statements made by Graff, in addition to other evidence creating an "inference" that the Respondent and Graff occasionally slept together in the east bedroom, were not sufficient to reasonably establish that Graff shared Respondent's bedroom. *Id.* at 168-69.

30. *Id.* at 169.

31. *Id.* at 172-77.

32. *Matlock*, 415 U.S. at 170. The Court stated: "[T]he consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared." *Id.*

33. *See id.* at 171-72.

34. *Id.* The Court clarified the baseline rule relating to third-party consent of a warrantless search as follows:

These cases at least make clear that when the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained from a third-party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.

*Id.* at 171.

35. *See supra* text accompanying note 32.

36. *Illinois v. Rodriguez*, 497 U.S. 177 (1990).

37. *Id.* at 188-89.

38. *Id.* at 179.

mother's house.<sup>39</sup> Fischer accompanied the officers to Respondent's apartment, unlocked the door, and consented to their entry.<sup>40</sup> The officers arrested Respondent after they discovered illegal drugs and drug paraphernalia in the apartment.<sup>41</sup> Respondent moved to suppress the evidence discovered during the search.<sup>42</sup> The state trial court upheld Respondent's motion and the ruling was affirmed on appeal.<sup>43</sup> The U.S. Supreme Court granted certiorari<sup>44</sup> and reversed the decision of the Illinois Appellate Court.<sup>45</sup>

In reaching its decision, the Court focused on what is an objectively reasonable search given the circumstances.<sup>46</sup> The Court cautioned that subsequent courts must examine the facts of each case to ascertain the validity of an individual's claim that he or she actually has authority to consent to a search.<sup>47</sup> In *Rodriguez*, the Court ruled that if it is objectively reasonable for a law enforcement officer to believe that a third-party consenting to a warrantless search has the authority to do so, then the search is reasonable under the Fourth Amendment.<sup>48</sup>

The Court in the instant case acknowledged the *Rodriguez* rationale by recognizing the existence of a broad test for determining whether an individual appears to have common authority over a shared premises.<sup>49</sup>

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39. *Id.*

40. *Id.* at 179-80. The information gathered by the officers from Fischer led them to believe that Fischer had the authority to consent to an entry of Respondent's apartment. *See id.* at 179. "During this conversation, Fischer several times referred to the apartment on South California [street] as 'our' apartment, and said that she had clothes and furniture there." *Id.*

41. *Rodriguez*, 497 U.S. at 180.

42. *Id.* Respondent claimed that Fischer "had vacated the apartment several weeks earlier" and thus lacked any authority that would allow her to consent to a search of his apartment. *Id.*

43. *Id.* The trial court agreed that Fischer's consent did not validate the search. *Id.* The Illinois Appellate Court "affirmed the Circuit Court in all respects. The Illinois Supreme Court denied the State's petition for leave to appeal . . ." *Id.*

44. *Id.* at 181.

45. *Id.* at 189.

46. *Rodriguez*, 497 U.S. at 188.

47. *Id.* The Court stated:

[W]hat we hold today does not suggest that law enforcement officers may always accept a person's invitation to enter premises. Even when the invitation is accompanied by an explicit assertion that the person lives there, the surrounding circumstances could conceivably be such that a reasonable person would doubt its truth and not act upon it without further inquiry.

*Id.*

48. *Id.* at 188-89 (citing *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)).

49. *Georgia v. Randolph*, 547 U.S. 103, 110 (2006) (citing *Rodriguez*, 497 U.S. at 181-82).

The Court, however, was unable to apply the broad objective reasonableness test established in *Rodriguez* to the facts in the instant case.<sup>50</sup> The presence of two co-occupants who express opposing opinions concerning consent to search the residence changes the dynamic of the analysis from an objective reasonableness test to a social expectations test.<sup>51</sup> Therefore, the *Rodriguez* objective reasonableness test alone was insufficient to solve the Fourth Amendment reasonableness of consent issue in the instant case.<sup>52</sup>

In an effort to thoroughly review relevant precedent, the Court in the instant case cited *Rodriguez* and recognized consent as an exception to the Fourth Amendment prohibition against a warrantless search of an individual's residence.<sup>53</sup> The instant Court then referred to *Matlock* as a solidification of a co-occupant's authority to consent to a warrantless search.<sup>54</sup> Citing *Matlock*, the instant Court clarified that the principle of co-occupant authority to consent to a warrantless search arises from commonly understood social expectations and not from property law.<sup>55</sup> After making this distinction, the Randolph Court agreed that social

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50. See *Randolph*, 547 U.S. at 113. The instant Court identifies the unique fact pattern in this case where two present co-occupants disagree over whether to allow law enforcement officers to search the residence. *Id.* The instant Court acknowledges that it has "not dealt directly with the reasonableness of police entry" in this situation and then begins a social expectations analysis of this situation. *Id.*

51. See *infra* text accompanying note 55.

52. See *Randolph*, 547 U.S. at 114-15. The instant Court emphasizes the expanded applicability of the social expectations test. See *id.* The measure of reasonableness of the search no longer involves only a determination of whether it is objectively reasonable that each person at the door is an occupant of the shared residence. See *id.* Social expectations dictate that the refusal of one present co-occupant to allow consent to search the residence nullifies any grant of consent to search the residence by any other co-occupant. See *id.*

53. *Id.* at 109 (citing *Rodriguez*, 497 U.S. at 181).

54. *Id.* at 111.

55. *Id.* at 110. The instant Court included the following language from *Matlock* to explain why a third-party has the authority to consent to a warrantless search of a residence to retrieve evidence:

The authority which justified the third-party consent does not rest upon the law of property, with its attendant historical and legal refinement, but rests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched.

*Id.* (citing *United States v. Matlock*, 415 U.S. 164, 171 n.7 (1974)).

expectations of the likelihood of a guest to accept an invitation to enter a residence will vary greatly depending upon the circumstances under which the invitation to enter is given.<sup>56</sup>

The Court had never addressed the validity of consent to perform a warrantless search in a situation where there are two present co-occupants and one grants consent while the other opposes it.<sup>57</sup> Therefore, the instant Court turned its attention to the socially expected outcome of a guest being invited into the residence by one co-occupant and denied entry by another.<sup>58</sup> After reasoning that one co-occupant does not generally have any dominion over another,<sup>59</sup> the instant Court concluded that one co-occupant's consent to a guest's entry while the other refuses is the equivalent of no invitation to entry.<sup>60</sup> Therefore, applying social expectations to the instant case, police entry in this situation is considered unreasonable.<sup>61</sup> The instant Court held that the refusal by one present co-occupant to consent to a search of the co-occupant's residence negates the ability of law enforcement officers to obtain consent to search the residence from any other co-occupant.<sup>62</sup>

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56. *Id.* at 113. The instant Court implied that a guest would almost certainly enter if the only present co-occupant offered the guest an invitation to enter the residence. *See id.* To emphasize the difference in the expected behavior of the guest if two present co-occupants do not agree on allowing the guest to enter the residence, the instant Court stated the following:

[I]t is fair to say that a caller standing at the door of shared premises would have no confidence that one occupant's invitation was a sufficiently good reason to enter when a fellow tenant stood there saying, "stay out." Without some very good reason, no sensible person would go inside under those conditions.

*Id.*

57. *Randolph*, 547 U.S. at 108.

58. *See id.* at 111.

59. *Id.* at 114. The instant Court stated: "[T]here is no common understanding that one co-tenant generally has a right or authority to prevail over the express wishes of another . . ." *Id.*

60. *Id.*

61. *Id.* The following language from the instant Court clarifies this conclusion:

Since the co-tenant wishing to open the door to a third-party has no recognized authority in law or social practice to prevail over a present and objecting co-tenant, his disputed invitation, without more, gives a police officer no better claim to reasonableness in entering than the officer would have in the absence of any consent at all.

*Id.*

62. *Randolph*, 547 U.S. at 120. The holding of the instant Court states: "We therefore hold that a warrantless search of a shared dwelling for evidence over the express refusal of consent by

Mindful of the potentially harmful implications of its decision in domestic abuse situations, the instant Court stressed that those inflicting domestic abuse would not be afforded protection under the instant holding.<sup>63</sup> Law enforcement entry into a residence in domestic abuse situations is categorically different from entry due to a resident's consent to search a house for evidence of criminal activity.<sup>64</sup> The instant Court firmly asserted that its decision only applied to law enforcement officers requesting consent to perform an evidential search.<sup>65</sup>

That established, the Court pointed out that the instant case is dealing with a completely different exception to the Fourth Amendment.<sup>66</sup> The instant case is only focused on whether consent to perform a search is reasonable, as were the prior cases of *Frazier*,<sup>67</sup> *Matlock*,<sup>68</sup> and *Rodriguez*<sup>69</sup> to which the instant Court looked for guidance.

Finally, the instant Court clarified two potential ambiguities that could arise after its opinion.<sup>70</sup> The first was the need for a further distinction of the *Matlock* opinion.<sup>71</sup> The authority in *Matlock* for valid co-occupant consent to entry was derived from social expectations, not property law, and only applies when one present co-occupant consents to entry.<sup>72</sup> The second was a reemphasis of the very narrow application of the instant holding.<sup>73</sup> The holding in the instant case is only pertinent if two, or more, present co-occupants take opposing positions when law enforcement

a physically present resident cannot be justified as reasonable as to him on the basis of consent given to the police by another resident." *Id.*

63. *Id.* at 118.

64. *Id.* The instant Court stated: "[T]his case has no bearing on the capacity of the police to protect domestic victims." *Id.*

65. *See id.*

66. *Id.* at 118-19. The instant Court stated: "The undoubted right of police to enter in order to protect a victim, however, has nothing to do with the question in this case, whether a search with the consent of one co-tenant is good against another, standing at the door and expressly refusing consent." *Id.*

67. *Frazier v. Cupp*, 394 U.S. 731, 740 (1969). "Since Rawls was a joint user of the bag, he clearly had authority to consent to its search." *Id.* at 740.

68. *United States v. Matlock*, 415 U.S. 164 (1974). The Court focused on the legal sufficiency of third-party consent to search a residence. *Id.* at 166. The Court's analysis using legal sufficiency is very similar to an analysis of reasonableness. *See id.* at 176.

69. *Illinois v. Rodriguez*, 497 U.S. 177 (1990). The Court specifically focused on a law enforcement officer's reasonable belief with regard to whether a third-party consenting to a search of a shared residence had authority to do so. *Id.* at 179.

70. *Randolph*, 547 U.S. at 120-21.

71. *Id.* at 120.

72. *See supra* text accompanying notes 32, 55.

73. *Randolph*, 547 U.S. at 121.

officers request consent to perform an evidential search of the residence.<sup>74</sup>

The *Frazier* Court discussed the foundation for valid third-party consent to a warrantless search of a shared space.<sup>75</sup> *Matlock* expanded the applicability of such consents to shared residences.<sup>76</sup> *Rodriguez* then addressed the apparent authority of such third-party consent.<sup>77</sup> The *Rodriguez* Court described the objective standard that law enforcement officers at the scene must utilize before a third-party's consent to a warrantless search is deemed valid.<sup>78</sup>

The instant Court abruptly halted the steadily advancing line of cases granting reasonableness to warrantless searches of residences when consent is granted by a third-party.<sup>79</sup> Recognizing the complications in applying past decisions to the instant facts,<sup>80</sup> the Court refused to declare one co-occupant's consent to a warrantless search of a residence reasonable when another objecting co-occupant is present at the time consent to the search is requested.<sup>81</sup>

Once again focusing on the reasoning employed in the *Matlock* decision, the instant Court reaffirmed the rule that a single co-occupant may consent to the warrantless search of a shared residence.<sup>82</sup> The instant Court then analyzed the dramatically different circumstances when two present co-occupants take opposing positions on consent to a warrantless search.<sup>83</sup> The Court chose to use social expectations as the measure for reasonableness in distinguishing the reasonable search in *Matlock* from

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74. See *supra* text accompanying note 62.

75. See *supra* text accompanying note 20 (explaining the Court's reasoning behind this decision).

76. See *supra* text accompanying note 32.

77. *Illinois v. Rodriguez*, 497 U.S. 177, 179 (1990).

78. *Id.* at 188-89 (citing *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)).

79. *Georgia v. Randolph*, 547 U.S. 103, 120 (2006). The instant Court considered both social custom and private law in weighing the justification of one co-occupant's consent to a warrantless search when another present co-occupant objects to the search. *Id.*

80. See *id.* at 111-15.

81. See *supra* text accompanying note 61.

82. *Randolph*, 547 U.S. at 111. The instant Court explained that the authority of a single co-occupant to consent to a warrantless search of a shared residence is derived from the risk assumed in co-occupant living situations. *Id.* at 111-12 (citing *United States v. Matlock*, 415 U.S. 164, 169-72 (1974)). It is expected that law enforcement officers will rely on this principle of assumed risk when only one co-occupant is present and consents to a warrantless search. *Id.* Such a search is considered to be reasonable. See *id.*

83. *Id.* at 113. One co-occupant consenting to a guest's entry of a shared residence, and another refusing to allow that same guest to enter, puts the guest in an uncomfortable situation where the guest is unlikely to enter the residence. *Id.* However, if only one co-occupant is present upon the guest's arrival and that co-occupant consents to entry, the guest in that situation is likely to enter the residence. See *id.*

the unreasonable search in the instant case.<sup>84</sup> The assumption of risk rationale that was critical to the justification of a third-party's consent to the warrantless search of a shared space in both *Matlock*<sup>85</sup> and *Frazier*<sup>86</sup> did not exist in the instant facts.<sup>87</sup> Therefore, the Court could not find another basis in reaching the reasonableness requirement in the instant case.<sup>88</sup>

The instant Court strengthened the Fourth Amendment's applicability to co-occupants by holding a warrantless search unreasonable when one co-occupant consents to a search while another present co-occupant refuses it<sup>89</sup> by applying the measure of social expectations as the test for reasonableness.<sup>90</sup> The linchpin connecting the social expectations analysis to the conclusion reached by the instant Court was the analysis of co-occupant authority.<sup>91</sup> When two or more present co-occupants express opposing views on any issue concerning all of the parties involved, generally, no one co-occupant has any authority to supersede the opposing views of any other.<sup>92</sup> Therefore, authority being equal, if one present co-occupant consents to a warrantless search, and another one opposes it, then law enforcement officers have not received valid consent and any search under such circumstances would be unreasonable.<sup>93</sup>

The Court undoubtedly had its collective eyes on the policy endorsed by its decision in the instant case, as well as that policy's effect on the general population. To grant greater weight to one co-occupant's wishes simply because that co-occupant would allow a search of the shared residence despite the opposition of another present co-occupant would erode the privacy protection of the Fourth Amendment.<sup>94</sup> The repercussion on the general population would be less Fourth Amendment protection provided to co-occupants than those who choose to or are financially able

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84. *Id.* at 111, 114-15.

85. *Matlock*, 415 U.S. 164, 170-71 (1974).

86. *Frazier v. Cupp*, 394 U.S. 731, 740 (1969).

87. *See Randolph*, 547 U.S. at 113. The instant Court discusses assumption of risk when referring to *Matlock*, but realizes there is no need to address assumed risk when each co-occupant is present. *See id.*

88. *See id.* at 114.

89. *See id.* at 120.

90. *See supra* text accompanying notes 61, 62, & 79.

91. *See supra* text accompanying notes 61 & 62. The authority analysis was necessary to the instant Court's decision because it negated any possibility that consent to search somehow carried more weight than an objection to the same search. *See Randolph*, 547 U.S. at 120.

92. *See supra* text accompanying note 61.

93. *See supra* text accompanying notes 61 & 62.

94. *See supra* text accompanying notes 61 & 62.

to live on their own. If warrantless searches similar to the one performed in the instant case were reasonable, then co-occupants would be effectively lowered to second-class citizens to whom Fourth Amendment protection has reduced applicability.

A critical focus of the instant Court's decision was directed at co-occupant authority.<sup>95</sup> Obviously, an individual's privacy is reduced if that individual lives in a residence as a co-occupant, except in domestic violence situations.<sup>96</sup> That individual's expectation of privacy is even reduced as to societal authorities when the individual leaves the residence or chooses to let other co-occupants answer a knock at the door.<sup>97</sup> However, Fourth Amendment privacy protection must exist when the same individual actively participates in the decision-making process of who shall be permitted to enter that individual's residence.<sup>98</sup> The Court's removal of this historic and fundamental right would have undercut the foundation of the Fourth Amendment that American citizens have relied upon for centuries.

Turning the tide against growing case law to the contrary,<sup>99</sup> the U.S. Supreme Court declared the actions of law enforcement officers in the instant case unreasonable under the Fourth Amendment.<sup>100</sup> Consent to perform a warrantless search of a shared residence is not obtained when two or more present co-occupants disagree about whether to consent to such a search.<sup>101</sup> The decision provides each present co-occupant the right to privacy in the home. An individual who resides alone may prevent law enforcement intrusion simply by refusing to consent to a warrantless search. The U.S. Supreme Court correctly decided to extend the Fourth Amendment protection to each present co-occupant facing the same situation.

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95. See *supra* text accompanying note 59.

96. *Randolph*, 547 U.S. at 118-19. "The undoubted right of the police to enter in order to protect a victim, however, has nothing to do with the question in this case, whether a search with the consent of one co-tenant is good against another, standing at the door and expressly refusing consent." *Id.*

97. See *supra* text accompanying note 32.

98. See *supra* text accompanying note 62.

99. See *supra* text accompanying notes 20 and 34. In *Rodriguez*, the Court validated third-party consent to search a residence because law enforcement officers reasonably believed the third-party had authority to consent to the search. *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990).

100. See *supra* text accompanying note 62.

101. See *supra* text accompanying note 62.

